

EXHIBIT 20

1 UNITED STATES DISTRICT COURT

2 WESTERN DISTRICT OF NEW YORK

3 - - - - - X

4 MICHAEL DONOGHUE and PREMIUM) 20CV6100

5 MORTGAGE CORPORATION,
Plaintiffs)

6 vs. Rochester, New York

7 CYNTHIA NOSTRO, DYLAN RANDALL,

8 DAVID POPHAM and EVERETT

9 FINANCIAL, INC d/b/a SUPREME

10 LENDING) February 25, 2022
1:00 p.m.

11 - - - - - X

12 **CASE MANAGEMENT CONFERENCE**

13 TRANSCRIPT OF PROCEEDINGS
14 BEFORE THE HONORABLE MARK W. PEDERSEN
15 UNITED STATES MAGISTRATE JUDGE

16 SHARON P. STILLER, ESQ.

17 MAUREEN BASS, ESQ.

18 ALEX FANTAUZZO, ESQ.

19 Abrams, Fensterman, LLP

20 Ferrara & Wolf, LLP

21 160 Linden Oaks, Suite E

22 Rochester, New York 14625

23 (Appearing on behalf of the Plaintiff)

24 ANNA S.M. MCCARTHY, ESQ.

25 JEFFREY J. CALABRESE, ESQ.

Harter Secrest and Emery, LLP

50 Fountain Plaza, Suite 1000

Rochester, New York 14604

(Appearing on behalf of Defendants Nostro, Randall &
Popham)

STEVEN E. COLE, ESQ.

Adams Leclair LLP

28 East Main Street, Suite 1500

Rochester, New York 14614

(Appearing on behalf of Defendant Everett Financial, Inc
d/b/a/ Supreme Lending

COURT REPORTER: Karen J. Clark, Official Court Reporter
Karenclark1013@AOL.com

1 M. DONOGHUE, ET AL VS. C. NOSTRO, ET AL

14:29:22 2 again, I reference the box of 1200 pages of Premium
14:29:28 3 documents. Had this interrogatory been answered,
14:29:34 4 whether in October of 2020 or November of 2021, we would
14:29:40 5 not have had to guess. We would have known that that
14:29:44 6 was one of the pieces that was relevant that they have.

14:29:50 7 MAGISTRATE JUDGE PEDERSEN: All right. Let
14:29:51 8 me deal first with Supreme. Mr. Cole, finally you get a
14:29:55 9 speaking part an hour and a half into this.

14:29:56 10 MR. COLE: I apologize for my voice, Judge.
14:29:59 11 I came back from a vacation in altitude a few days ago
14:30:05 12 and my voice is not carried with me quite as well as it
14:30:09 13 should have.

14:30:10 14 MS. STILLER: No more vacations.

14:30:14 15 MR. COLE: So, as far as addressing the
14:30:17 16 specific issue raised as to Supreme's text messages, you
14:30:23 17 know, Supreme, as you know, of course, is an
14:30:28 18 organizational entity. And there have been requests for
14:30:36 19 text messages to be retrieved, reviewed and produced.
14:30:40 20 Stepping back from where we are right now is that
14:30:46 21 Supreme has basically been in a position of trying to
14:30:48 22 figure out exactly what the next, and, hopefully, final
14:30:53 23 production looks like, depending on what your Honor
14:30:56 24 rules, what the relevant universe of potential
14:31:00 25 pre-qualified customers are, and the scope of the other

1 M. DONOGHUE, ET AL VS. C. NOSTRO, ET AL

14:31:07 2 documents, document requests that we've received. So we
14:31:11 3 have a number of documents ready to be produced and are
14:31:15 4 in the process of being produced. And what Supreme has
14:31:25 5 done, really, is to try and determine, out of all of the
14:31:28 6 -- they have many, many, they have many, many, they have
14:31:34 7 many, many offices, they have many employees, they have
14:31:38 8 many customers. And in order to properly search their
14:31:42 9 records, they need more information. And that is --
14:31:47 10 we've been through this a couple of times here. Judge,
14:31:50 11 I think we're at the point where Premium has identified
14:31:56 12 the 43 or so pre-qualified customers that it says came
14:32:00 13 over to Supreme. There, in addition, have been the
14:32:09 14 documents that were recently produced by Supreme that
14:32:13 15 identified all of the closings for 2019 after the
14:32:19 16 individual defendants came to Supreme's employment that
14:32:24 17 have been produced to Premium this past week after the
14:32:29 18 last conference, and a meet and confer between counsel.
14:32:35 19 And as a result, between the request for -- once we have
14:32:43 20 all of the necessary information to conduct the search,
14:32:47 21 we already have the documents ready to search. We
14:32:51 22 conducted the searches, and I believe we're in a
14:32:56 23 position to provide a comprehensive response in a very
14:33:00 24 short order. But it's been, as we've been going through
14:33:04 25 this process with the meet and confers, to try and

1 M. DONOGHUE, ET AL VS. C. NOSTRO, ET AL

14:33:07 2 determine exactly what is responsive and what is
14:33:11 3 extraneous to this dispute, it's taken time for us, for
14:33:15 4 our eDiscovery vendor to go through and provide the
14:33:21 5 responsive documents, and then have them reviewed. So,
14:33:24 6 we're in a position to do that. Included in that, I
14:33:27 7 believe, is going to be some reviews of text messages
14:33:32 8 exchanged by some of the senior people involved at
14:33:37 9 Supreme at the time that the individual defendants came
14:33:40 10 over. And I think that is really the time period we're
14:33:44 11 talking about here. So, in terms of those individuals
14:33:48 12 who were in communication with the individual
14:33:50 13 defendants, to the extent there are text messages with
14:33:53 14 respect to those individuals, those that are relevant
14:33:57 15 and responsive to the requests that have been made,
14:34:02 16 those are going to be produced.

14:34:04 17 MS. STILLER: Your Honor, there was a
14:34:05 18 litigation hold letter May 2nd, 2019, request October of
14:34:12 19 2020, we have been patient and waited and waited and we
14:34:17 20 should not have to wait any longer or say these things
14:34:20 21 may be produced or we're looking for them. They should
14:34:25 22 have held onto them in 2019. They should have produced
14:34:29 23 them in 2020. And the fact that we, because we keep
14:34:34 24 pushing for the production that should have occurred in
14:34:37 25 the beginning, the fact that this stuff is revealed and

1 M. DONOGHUE, ET AL VS. C. NOSTRO, ET AL

14:34:41 2 then put into a corner where they finally have to reveal
14:34:44 3 it, we shouldn't have to wait. This should get done.
14:34:48 4 We shouldn't have had to spend all of this time and
14:34:52 5 energy on it. What everybody is admitting today is that
14:34:57 6 there is relevant stuff that hasn't been produced and it
14:35:02 7 hasn't been produced in a fashion where it's useful to
14:35:07 8 us. We've been forced to pull teeth like dentistry.
14:35:12 9 We've put in our motion papers that with respect to the
14:35:15 10 text messages and preserving text messages, there is no
14:35:20 11 one who should know about that better than Supreme
14:35:23 12 because Supreme had brought a similar lawsuit claiming
14:35:27 13 that their business was stolen from another individual
14:35:35 14 and they actually faced a spoliation motion as a result
14:35:42 15 of having deleted text messages. So, when I sent -- and
14:35:47 16 that was back in, I think, 2016 or 2017. So they can't
14:35:54 17 claim ignorance or surprise or anything. And, you know,
14:35:57 18 I know that your Honor wants to get through this
14:36:04 19 process. But it shouldn't be this difficult. It
14:36:08 20 shouldn't be -- we shouldn't be getting promised
14:36:09 21 documents on the if come at this point of the
14:36:13 22 litigation.

14:36:15 23 MAGISTRATE JUDGE PEDERSEN: So, Mr. Cole,
14:36:16 24 what do you need to finish up your search and
14:36:19 25 production.

1 M. DONOGHUE, ET AL VS. C. NOSTRO, ET AL

14:36:21 2 MR. COLE: Basically nothing now, Judge.

14:36:22 3 We're in process. And the problem has always been that

14:36:28 4 we were not told by Premium what customers were at

14:36:34 5 issue. We finally were told in January of 2022, some of

14:36:39 6 the names of customers that were pre-qualified at

14:36:44 7 Premium, and they said ended up closing loans at

14:36:48 8 Supreme. We immediately -- we immediately investigated

14:36:52 9 that and we added any of those customers that we hadn't

14:36:56 10 already searched. Because we already did a search. We

14:36:59 11 did a production in January of 2022. They complained

14:37:03 12 about how many documents there were because that is the

14:37:06 13 way it is. If you search a borrower's name in Supreme's

14:37:11 14 files, you're going to get many, many documents.

14:37:13 15 Because there are many, many documents associated with a

14:37:15 16 loan closing. We took a list that was given to us at

14:37:20 17 mediation, when we were at mediation in this case, and

14:37:23 18 it seems like a long time ago now, we used that list.

14:37:27 19 So we produced a lot of documents. And then when they

14:37:32 20 actually came forward with documents showing somebody

14:37:35 21 had been pre-qualified at Premium, it was a small

14:37:39 22 percentage of those customers and there were some

14:37:43 23 additional customers that were not on the list to begin

14:37:47 24 with. So we already gave a production. And so we've

14:37:50 25 already over produced on one hand because we went from

1 M. DONOGHUE, ET AL VS. C. NOSTRO, ET AL

14:37:54 2 information that we relied on Premium to provide. Since
14:38:00 3 then, we've gotten the pre-qualification, the 43
14:38:05 4 borrowers that were actually pre-qualified, we've
14:38:09 5 searched them. We've gone through all of the pipeline
14:38:13 6 documents at Supreme. So, from April of 2019, when the
14:38:17 7 individual defendants came, to the end of May of 2019,
14:38:20 8 so every prospect that was lined up with any of the
14:38:25 9 individual defendants, we've taken those prospects and
14:38:28 10 searched all of those. Again, because Premium was
14:38:32 11 insisting that any loan closing that was done by the
14:38:37 12 Williamsville office in 2019 was a possible hit on one
14:38:43 13 of their, one of their pre-qualifications back in 2019,
14:38:50 14 we've searched all of those, too. All right. All of
14:38:53 15 that stuff has been searched. It needs to be finally
14:38:58 16 reviewed and produced, probably in the next two weeks.
14:39:01 17 As far as I'm concerned, we'll be done with providing
14:39:06 18 any information that we have in our system that relates
14:39:09 19 to any of their discovery requests, and that includes
14:39:13 20 the commission information that we discussed the last
14:39:15 21 time we were here, Judge. That, we are providing that
14:39:20 22 after discussion with the Plaintiffs in this case. And
14:39:25 23 any documents relating to the retaliation lawsuit that
14:39:28 24 we have, to the extent we can find them by searching our
14:39:33 25 files for things like that, we'll produce that, too.

1 M. DONOGHUE, ET AL VS. C. NOSTRO, ET AL

14:39:36 2 And, you know, if there are any other loan, any
14:39:43 3 additional pre-qualified customers that the Plaintiffs
14:39:46 4 identify that we haven't already searched, we'll search
14:39:50 5 that, too, because we just need to take the volume of
14:39:54 6 information that we have, apply the search terms that
14:39:58 7 they are looking for, and then actually have the
14:40:02 8 analysis done. And it all takes time. It takes time to
14:40:07 9 ingest all of the data. It takes time to review all of
14:40:11 10 the data, and it takes time to produce, and it's not a
14:40:17 11 cheap process, so we want to do it one more time and be
14:40:21 12 done with it.

14:40:21 13 MAGISTRATE JUDGE PEDERSEN: I understood
14:40:22 14 from our very beginning of our discussions on discovery,
14:40:26 15 Premium didn't know the extent of which the systems were
14:40:29 16 breached because the individual defendants allegedly
14:40:33 17 erased information, so how could they have given you any
14:40:37 18 names?

14:40:37 19 MR. COLE: But they did know, Judge. They
14:40:40 20 did know. And my understanding that the only thing that
14:40:42 21 got erased from Premium systems was an e-mail address
14:40:47 22 and/or telephone number for individual customers. And
14:40:51 23 then they provided that very information to the DA's
14:40:55 24 office as to what files were impacted. And then I'm led
14:40:59 25 to understand that that information was then retrieved

1 M. DONOGHUE, ET AL VS. C. NOSTRO, ET AL

14:41:02 2 and the individual defendants were required to pay for
14:41:07 3 the restoration of that information. So, Ms. Stiller,
14:41:09 4 in the infamous May litigation hold letter, identified
14:41:15 5 exhibit A. We've been over this before, Judge. Exhibit
14:41:18 6 A was supposed to be this list of customers that was
14:41:21 7 sent out to the individual defendants and to Supreme.
14:41:24 8 And what Supreme said was, well, we received this
14:41:31 9 letter, and it says there is an exhibit A to that
14:41:34 10 identifies the loans to the customers that are in issue.
14:41:38 11 Could you please provide it to us and then we'll
14:41:42 12 investigate. Nothing. And nothing happened for seven
14:41:46 13 months. And then they filed the lawsuit. If this was
14:41:49 14 such an important theft of confidential information by
14:41:53 15 Premium, why did they do nothing for seven months?
14:41:58 16 Anyway, this is not to argue whether or not it's a
14:42:02 17 legitimate argument or legitimate scope of discovery, it
14:42:06 18 is. We're not fighting it. We just have to get our
14:42:09 19 handle on what customers are you talking about. Because
14:42:12 20 they certainly know about some of them. And I believe
14:42:14 21 they know about all of them. And when we eventually get
14:42:17 22 to Supreme's outstanding discovery issues for the
14:42:21 23 Plaintiffs, that is really what we're asking. You're
14:42:26 24 saying that information was taken and deleted. Well,
14:42:29 25 what information was it. Well, here is a list. Here is

1 M. DONOGHUE, ET AL VS. C. NOSTRO, ET AL

14:42:32 2 a list of files. All right. Did you produce the files?

14:42:35 3 No, we didn't produce the files. Okay. Well, how do

14:42:39 4 you know what is deleted?

14:42:42 5 In the last meet and confer, Ms. Bass told

14:42:45 6 me, well, it was e-mail addresses and telephone number.

14:42:50 7 My understanding is, if those were deleted, they are

14:42:54 8 able to be restored. And I believe they were restored.

14:42:58 9 And, but, I don't know that for a fact. That is what

14:43:01 10 discovery is for. My belief is they well knew who at

14:43:05 11 least most of the customers were. They were able to

14:43:08 12 identify 43 of those customers to us in response to

14:43:12 13 discovery in January of 2022, and that is what we're

14:43:15 14 going on.

14:43:17 15 MS. STILLER: Your Honor --

14:43:17 16 MAGISTRATE JUDGE PEDERSEN: Just a moment,

14:43:18 17 Ms. Stiller. Go ahead.

14:43:25 18 MS. STILLER: If I may just briefly, they

14:43:27 19 say that the best defense is a good offense. And most

14:43:31 20 of Mr. Cole's explanation of why we haven't received

14:43:35 21 discovery despite having served discovery requests 16

14:43:39 22 months ago is an offense, which it is, again, and I

14:43:45 23 think this is the third time I've repeated this word,

14:43:49 24 disingenuous. I have said to him and I have said to the

14:43:53 25 Court that I had hoped to compile a schedule A, but was

1 M. DONOGHUE, ET AL VS. C. NOSTRO, ET AL

14:43:57 2 unable to do that because the information was deleted
14:44:00 3 from our system. So schedule A was never compiled.

14:44:07 4 With respect to Mr. Cole, he said he will
14:44:10 5 provide full discovery. It's full discovery according
14:44:15 6 to Mr. Cole, because he invents what is relevant versus
14:44:19 7 what we have requested. So, for example, he has limited
14:44:23 8 the documents that he has disclosed to, initially, to
14:44:31 9 Premium showing that they had information about this
14:44:35 10 person before, despite the fact that the computers were,
14:44:41 11 admittedly, tampered with. Now we find in February of
14:44:45 12 2022 that there are 1200 pages worth of prospective
14:44:52 13 client information that either was not entered into the
14:44:56 14 system or we had no idea that they had it. So, to say
14:45:01 15 that there are 43 files or that we have the information
14:45:05 16 or that our ability to show anything is related to their
14:45:10 17 showing what they took, what they did with it, and what
14:45:14 18 sales were generated as a result of it, is, frankly,
14:45:19 19 ridiculous. So, in the answers to request to produce,
14:45:28 20 it has all been supplemented. Now that they've agreed
14:45:33 21 to produce, they've only agreed to produce certain
14:45:36 22 things. So, commissions. Commissions for 2019. Well,
14:45:40 23 they took with them, or, apparently, Mr. Randall took
14:45:46 24 pre-qualification applications from Premium borrowers
14:45:52 25 from 2017 to 2018. Why did he take them? Because these

1 M. DONOGHUE, ET AL VS. C. NOSTRO, ET AL

14:45:57 2 are the people that you can -- they are looking for
14:46:00 3 houses and you generate mortgages from these people. If
14:46:05 4 2017 to 2018 was not relevant, he would not have taken
14:46:10 5 it with him. And, again, there is a bunch of
14:46:14 6 information we have learned through the discovery
14:46:17 7 process that, aside from what was tampered with and what
14:46:21 8 was deleted from the system, there is a ton of
14:46:24 9 information that was never entered into the system to
14:46:29 10 begin with. Why? Because Supreme said, you make more
14:46:33 11 money if you bring more business over. So they used our
14:46:37 12 business to start their business, and our documents to
14:46:40 13 start it. But we're just pulling this stuff out right
14:46:44 14 now. They know what they did. They know what they
14:46:47 15 took. And to spend half of his response not explaining
14:46:53 16 why they haven't produced any of this stuff before and
14:46:56 17 to say, well, we're just learning what information
14:46:59 18 Premium has and doesn't have, they know what they took.
14:47:04 19 They know what they used. They know the sales.

14:47:08 20 I would also, you know, Mr. Cole says, well,
14:47:13 21 we'll produce it for 2019. That is half a year. In the
14:47:17 22 other case I was talking about where Scott Everett was
14:47:21 23 testifying, he testified that their damages would be a
14:47:23 24 year or more. When they did an analysis in that case,
14:47:28 25 they did an analysis for five years worth of damages.

1 M. DONOGHUE, ET AL VS. C. NOSTRO, ET AL

14:47:32 2 So, it's not just the untimeliness of this production,
14:47:38 3 and it's not just this disingenuous stuff that we're
14:47:42 4 dealing with, you know, with mixing everybody together
14:47:45 5 and saying, oh, you have it, you can figure it out,
14:47:48 6 spend more time, spend more money going through it. Mr.
14:47:53 7 Cole says that he produced borrower's documents. Well,
14:47:57 8 he has produced things like borrower's tax returns and
14:48:02 9 things like that, I don't really care about that stuff.
14:48:05 10 That is not what we requested. But, it's what I
14:48:08 11 referred to previously as a document dump. It makes it
14:48:13 12 more difficult for us to go through 200 pages of
14:48:18 13 lease-related documents or 200 pages of a checking
14:48:25 14 account provided by a borrower. We want to know -- we
14:48:31 15 want to know what communications they had about taking
14:48:36 16 business. We want to know what they took. We want to
14:48:40 17 know what they did with it. And we want to know who is
14:48:43 18 involved. And we still don't have that information. I
14:48:46 19 understand that your Honor, it's frustrating, your
14:48:53 20 Honor, we've been involved in, I think, seven
14:48:54 21 conferences with the Court, three meet and confers, one
14:48:58 22 meet and confer that they cancelled because we thought
14:49:02 23 it should be recorded to make sure it would be accurate
14:49:09 24 as to people saying what they did. I want there to be
14:49:12 25 an end to it, which is why we brought our motion to

1 M. DONOGHUE, ET AL VS. C. NOSTRO, ET AL

15:44:11 2 applications from 2017 and 2018, as well as 2019,

15:44:16 3 because they are useful to them. From those, they

15:44:21 4 bypass collecting data themselves and can contact those

15:44:26 5 people. And I had said in court before, but I've said a

15:44:31 6 lot of things, that one of the documents Cindy Nostro

15:44:45 7 prepared before she left Premium or at least left it on

15:44:49 8 the computer, was a letter to pre-qualified applicants,

15:44:53 9 so these are people who will qualify for a mortgage and

15:44:56 10 whose contact information we have, and who people know

15:45:00 11 are looking for a house, and that e-mail said, well, I

15:45:03 12 haven't talked to you in a long time, but I've joined

15:45:08 13 Supreme and here is Supreme's information and things of

15:45:12 14 the sort. So, you know, the one year, Mr. Cole has

15:45:19 15 tried to limit our access, as much as he can, to

15:45:22 16 whatever he can. This isn't discovery, and maybe at the

15:45:28 17 trial, it will turn out that other information is not

15:45:31 18 relevant. But, with respect to his contention that this

15:45:36 19 might just be additional information that a competitor

15:45:39 20 is looking for, he freely negotiated a protective order,

15:45:46 21 which protects that. So that any information that is

15:45:54 22 properly labeled as "confidential," is governed by the

15:45:57 23 protective order, which Mr. Cole, himself, thought was

15:46:03 24 sufficient. So, you know, honestly, I don't know how

15:46:08 25 long this information will have given them a leg up. I

1

16:13:03 2 Honor.

16:13:03 3 MAGISTRATE JUDGE PEDERSEN: All right.

16:13:05 4 MS. STILLER: Your Honor, you have one of
16:13:17 5 the binders.

16:13:17 6 THE CLERK: This notebook.

16:13:21 7 MAGISTRATE JUDGE PEDERSEN: Glad you
16:13:21 8 mentioned it, I probably would have forgotten.

9

10 * * *

11 CERTIFICATE OF REPORTER

12

13 I certify that the foregoing is a correct transcript
14 of the record of proceedings in the above-entitled
15 matter.16 S/ Karen J. Clark, RPR

17

Official Court Reporter

18

19

20

21

22

23

24

25